IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Constitutional Petition No.D-436 of 2011

Before:
Mr. Justice Khadim Hussain Tunio
Mr. Justice Jan Ali Junejo.

Petitioner:	Rustam Ali son of Sardar Khan Rajput, through Mr. Farrukh Baig, Advocate.
Official Respondents:	Through Mr. Allah Bachayo Soomro, A.A.G.
Date of hearing:	03-09-2025
Date of Judgment:	03-09-2025

JUDGMENT

Jan Ali Junejo, J. – This Constitutional Petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, assails the Order dated 10.03.2010 (hereinafter referred to as the *"Impugned Order"*) passed by the Member (Judicial-II), Board of Revenue, Sindh, at Hyderabad. Through the said order, the learned Member allowed a Review Petition and set aside the earlier Order dated 08.04.2003 passed by the Member (R&S) of the Board of Revenue. The petitioner prays for the restoration of the Order dated 08.04.2003, which had directed a fresh open katchery for the allotment of the disputed agricultural land.

2. The genesis of this litigation lies in the allotment of an agricultural land bearing Survey No. 377/1,2,3, 417/3,4 and 423/5, Eastern Side, measuring 16.00 acres, situated in Deh Suhelo Chak No. 3, District Shaheed Benazirabad ("the disputed land"). The case of the petitioner is that the disputed land, being State land, was to be allotted under the Sindh Land Grant Policy of 1989 to landless haris and small farmers. The petitioner, claiming to be a landless hari and a resident of the same deh, alleges that the land was secretly

allotted on 29.10.1991 to Respondent No. 5, Sher Muhammad (since deceased), who was a minor at the time, in blatant violation of the Policy's mandatory requirements of wide publicity and an open katchery.

3. The petitioner, upon coming to know of this alleged clandestine allotment, filed an appeal under Section 161 of the Sindh Land Revenue Act, 1967 before the Additional Commissioner, Sukkur. The said appeal was dismissed vide order dated 21.12.1995 both on the grounds of limitation and on merits.

4. Aggrieved, the petitioner preferred a Revision Petition under Section 164 of the Sindh Land Revenue Act, 1967, before the Board of Revenue. The Member (R&S), after examining the record, found merit in the petitioner's contention. Vide a detailed order dated 08.04.2003, the learned Member held that there was no evidence of proper wide publicity or of a fair opportunity having been afforded to aspiring candidates to contest the katchery. Consequently, he set aside the orders of the forums below and remanded the matter to the District Officer (Revenue) with a direction to dispose of the land through a fresh open katchery in the particular deh, strictly after fulfilling all legal formalities of the 1989 Policy. Not satisfied, the legal heirs of the allottee (Respondent No. 5) filed a Review Petition under Section 8 of the Board of Revenue Act, 1957, before the Member (Judicial-II). Vide the impugned order dated 10.03.2010, the learned Reviewing Member allowed the review, set aside the order of his predecessor (Member R&S), and thereby restored the original allotment in favour of Respondent No. 5. It is this order that has compelled the petitioner to invoke the constitutional jurisdiction of this Court.

5. The learned counsel for the petitioner, Mr. Farrukh Baig, urged the Court to allow the Constitutional Petition on the grounds that the impugned review order passed by the Member (Judicial-II) of the Board of Revenue was

without jurisdiction, as it exceeded the limited scope of review under Section 8 of the Sindh Board of Revenue Act, 1957, which is confined to correcting errors apparent on the face of the record and not re-adjudicating the merits of the case. He contended that the original allotment in favour of a minor was per se illegal and in blatant violation of the Sindh Land Grant Policy of 1989, which mandates wide publicity and an open *katchery* for the benefit of landless *haris*. He further argued that the Reviewing Member erroneously overturned the well-reasoned factual findings of the Member (R&S) regarding the absence of due publicity, a finding that was based on evidence and not susceptible to review. The petitioner, being a landless resident of the same *deh*, was prejudiced by the clandestine allotment and is entitled to preferential consideration under the policy.

6. The learned Additional Advocate General, Mr. Allah Bachayo Soomro, supporting the impugned order, prayed for the dismissal of the Constitutional Petition on the basis that the Board of Revenue, as the apex revenue court, possesses wide powers of review under Section 8 of the Sindh Board of Revenue Act, 1957, to correct errors and prevent miscarriage of justice. He argued that the Reviewing Member was within his jurisdiction to re-evaluate the evidence and conclude that the original allotment was made after due publicity and in accordance with law. He further contended that the petitioner was guilty of laches, having challenged the allotment after considerable delay, and that the Constitutional Petition is not maintainable as the petitioner failed to demonstrate any jurisdictional error, mala fides, or violation of fundamental rights warranting intervention under Article 199 of the Constitution.

7. We have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Advocate General, at considerable

length. We have also carefully examined the available record, including the memos of the petition, the annexures, and the impugned orders passed by the forums below. It is well-settled that the jurisdiction conferred upon this Court under Article 199 of the Constitution is extraordinary, equitable, and discretionary in nature. Such jurisdiction cannot be invoked as a matter of course or claimed as a vested right, nor does it permit this Court to act as a court of appeal to reappraise evidence or substitute its own findings for those recorded by the competent forums. The settled principles of law dictate that this Court, while exercising constitutional jurisdiction, intervenes only in limited circumstances. Interference is warranted where the impugned action or decision is shown to be *coram-non-judice*, tainted with mala fides, in violation of law or principles of natural justice, or where it suffers from a jurisdictional defect. Similarly, intervention is justified where a patent error of law or gross illegality has been committed, resulting in serious miscarriage of justice or where fundamental rights guaranteed under the Constitution stand infringed. In all other cases, the High Court refrains from disturbing the findings of fact recorded by the competent authorities or tribunals vested with jurisdiction under the relevant law. The discretionary writ jurisdiction is to be exercised sparingly, with circumspection, and only to advance the ends of justice and prevent abuse of process of law. It cannot be allowed to be invoked to bypass ordinary remedies provided under the law, or to convert the constitutional forum into a substitute for appellate or revisional jurisdiction.

8. Section 8 of the Sindh Board of Revenue Act, 1957 expressly empowers the Board to review its own orders. However, the legislative intent underlying this provision makes it abundantly clear that the scope of such review is circumscribed and cannot be equated with a rehearing of the matter on merits. A review is not an appeal in disguise; rather, it is a narrow remedy confined to rectifying patent mistakes or errors that are apparent on the face of the record,

or to considering new and material evidence which, despite due diligence, could not be placed before the authority at the relevant time. The fundamental distinction is that in an appeal, the entire matter is open to reconsideration, whereas in a review, the authority is restricted to correcting an obvious error or examining newly discovered evidence. In the present case, the order of the Member (R&S) dated 08.04.2003 represented a possible and logical view based on the material available before him. Subsequently, the Reviewing Member, by order dated 10.03.2010, re-evaluated the matter by placing emphasis on the alleged adequacy of publicity and reached a different conclusion. The divergence between the two Members on the factual issue of publicity only demonstrates that the matter was debatable and open to multiple interpretations. Jurisprudence on the law of review consistently holds that where two views are reasonably possible on a point, the substitution of one by another does not fall within the parameters of an "error apparent on the face of the record". An "error apparent" must be one that is self-evident, manifest, and does not require elaborate reasoning, interpretation, or reappraisal of evidence to be detected. Errors which need detailed scrutiny, involve appreciation of facts, or are the product of competing inferences cannot be corrected under the guise of review. Therefore, the Reviewing Member's act of reassessing the adequacy of publicity amounted to re-hearing the case on merits rather than correcting an obvious mistake. While his conclusion may arguably be considered erroneous, it does not qualify as an error so fundamental or egregious as to justify interference under the constitutional jurisdiction of this Court. Accordingly, the exercise of review jurisdiction by the Board in this case cannot be said to have been coram non judice, tainted with mala fides, or based on a jurisdictional defect. The impugned order represents a different but legally possible view, and in the

absence of a patent error of law or jurisdiction, no case for constitutional interference under Article 199 of the Constitution is made out.

9. The Board of Revenue, being the highest forum of fact in revenue matters, is statutorily empowered to examine and determine factual controversies arising within its jurisdiction. Its determinations on questions of fact carry finality unless shown to be perverse, patently illegal, or rendered without jurisdiction. The impugned order, upon close scrutiny, reveals that it essentially rests on a finding of fact to the effect that the original allotment was made after observance of due process. It is a settled proposition of law that this Court, while exercising its constitutional jurisdiction under Article 199 of the Constitution, does not sit as an appellate authority over such specialized forums to reappraise or reweigh the evidence. The grievance of the petitioner is primarily directed against the manner in which the Reviewing Member assessed and weighed the material on record as compared to his predecessor. Such an objection falls within the domain of appellate scrutiny, not judicial review. Once it is admitted that two views were possible on the same material, the mere substitution of one factual inference for another does not constitute an illegality or jurisdictional defect warranting interference by this Court. Judicial review is concerned with the decision-making process, not with the merits of the decision itself. Moreover, the chronology of events further weakens the petitioner's case for discretionary relief. The original allotment dates back to 1991. The petitioner approached the forum in 1995, and the matter has since been subjected to continuous litigation for well over three decades. Although the petitioner seeks to explain away the initial delay, the prolonged pendency of proceedings, spanning almost thirty years, militates against the invocation of the extraordinary and discretionary jurisdiction of this Court. It is a cardinal principle that constitutional relief, particularly of a discretionary nature, is not available to those who sleep over their rights or

perpetuate uncertainty through endless litigation. In view of the above, the impugned order of the Board of Revenue cannot be said to suffer from any jurisdictional defect, mala fides, or patent illegality, and no case is made out for interference under Article 199 of the Constitution.

10. Furthermore, the foundational premise of the petition is an alleged breach of the administrative guidelines encapsulated in the Sindh Land Grant Policy of 1989. It is a well-settled principle that a transgression of an executive policy, by its very nature, does not automatically equate to an infringement of a fundamental right enforceable under Article 199 of the Constitution. The protection of fundamental rights is governed by the provisions of Chapter 1 of the Constitution, and for this Court to exercise its extraordinary constitutional jurisdiction, a direct violation of one of these enumerated rights must be conclusively demonstrated. The petitioner's grievance, whilst potentially indicative of an administrative illegality, remains confined to the realm of a purported violation of policy directives which, without more, does not rise to the level of a constitutional breach. Moreover, allegations of *mala fides* levelled against a quasi-judicial authority are of a grave nature and must be supported by clear and convincing evidence. The petitioner has failed to discharge this heavy burden. No material has been placed on the record to substantiate the claim that the Reviewing Member acted with any oblique motive, personal bias, or dishonesty. In the absence of any such concrete evidence, the authority is presumed to have acted regularly and in good faith within the confines of its statutory powers.

11. The provisions of the Limitation Act, 1908, are not applicable *stricto sensu* to proceedings initiated under the constitutional jurisdiction of the High Court. Nevertheless, where a claim is *ex facie* barred by limitation had it been brought through a civil suit, the Court, while exercising its equitable

jurisdiction, may decline relief on the principle of laches. This doctrine is designed to prevent the reopening of past and closed transactions and to ensure that constitutional jurisdiction is not invoked to unsettle matters that have already attained finality due to the petitioner's own inaction or delay. When a person seeks to invoke the jurisdiction of this Court under Article 199, of the Constitution of Islamic Republic of Pakistan, 1973, he is required to approach within a reasonable time. Although the term *reasonable time* has not been defined in any statute, the Honourable Supreme Court has consistently interpreted it to be approximately 90 days, subject to recognized exceptions. In the present case, the Impugned Order was passed on 10.03.2010, while the Constitutional Petition was filed on 08.03.2011, clearly beyond a reasonable period. The petitioner has failed to provide any satisfactory explanation for this undue delay in invoking the jurisdiction of this Court. Consequently, the petition is barred by laches and is not maintainable. This view finds support in the judgment of the Honourable Supreme Court in Case of ***Trustees of the Port of Karachi v. Organization of Karachi Port Trust Workers and others (2013 SCMR 238)***, where it was observed that: *"Undoubtedly, the provisions of Limitation Act, 1908 cannot be stricto sensu made applicable to the claims set forth in the constitutional jurisdiction of the High Court, but if the claim on the fact of it is barred by law of limitation in relation to the suit, the relief should be refused to the writ Petitioners on the rule of laches and past and closed transaction. It is settled law that in the adversarial litigation on account of the lapse of prescribed period of limitation, a valuable right is created in favour of the other party. Thus it shall be ludicrous to conceive and hold that although the normal remedy of the person in a dispute of civil nature is barred by limitation in the ordinary and normal course of lis, yet the right earned by the opposite side as mentioned above, shall be stultified, defeated and annulled in the extra-ordinary discretionary jurisdiction of the High Court, by ignoring the bar of limitation"*. In another analogous case, ***Pakistan International Airline***

Corporation and others v. Tanweer-ur-Rehman and others (PLD 2010 SC 676), the Honourable Supreme Court of Pakistan was pleased to hold that: *"But as far as the rule laid down in these judgments is concerned, it would not be applicable to an ordinary person filing petition by invoking jurisdiction of the High Court under Article 199 of the Constitution and he has to approach the Court within the reasonable time. Although, no definition of the expression 'reasonable time' is available in any instrument of law, however, the Courts have interpreted it to be 90 days. Reference in this behalf can be made to Manager, Jammu & Kashmir State Property v. Khuda Yar (PLD 1975 SC 678)".*

12. Having carefully examined the record and considered the arguments advanced, we find no grounds to interfere with the impugned order dated 10.03.2010. The Member (Judicial-II) of the Board of Revenue committed no jurisdictional error, illegality, or act of *mala fides* and remained squarely within the statutory confines of its review power. The fact that a different view was taken on a debatable issue of fact does not render the subsequent decision perverse or irrational, a necessary threshold for constitutional intervention.

13. In light of the foregoing discussion, this Constitutional Petition, filed on behalf of the Petitioner, was dismissed as being devoid of merit. The parties are left to bear their own costs. These are the reasons for our Short Order announced on 03.09.2025.

JUDGE

JUDGE

Ahmed/Pa,